



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[CG Docket No. 11-99; DA 11-1833]

Termination of Certain Proceedings as Dormant

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of proceedings.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (CGB), terminates, as dormant, certain docketed Commission proceedings. Termination of these inactive proceedings furthers the Commission's organizational goals of increasing the efficiency of its decision-making, modernizing the agency's processes in the digital age, and enhancing the openness and transparency of Commission proceedings for practitioners and the public.

DATES: Effective **[INSERT DATE UPON PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dorothy Stifflemire, Consumer and Governmental Affairs Bureau at (202) 418-7349, or e-mail: Dorothy.Stifflemire@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, Termination of Certain Proceedings as Dormant, document DA 11-1833, adopted November 1, 2011 and released on November 1, 2011, in CG Docket No. 11-99. On June 3, 2011, the Commission sought comment on whether certain listed docketed Commission proceedings should be terminated as dormant. See 76 FR 35892, June 20, 2011. The full text of document DA 11-1833 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center,

Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document DA 11-1833 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its web site, www.bcpweb.com, or by calling (202) 488-5300. Document DA 11-1833 can also be downloaded in Word or Portable Document Format (PDF) at

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1833A1.doc.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, therefore, it does not contain any information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4).

SYNOPSIS

1. On February 4, 2011, the Commission released Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, Report and Order, FCC 11-16, in CG Docket No. 11-44, published at 76 FR 24383, May 2, 2011 (Procedure Order), which revised portions of its Part 1 – Practice and Procedures and Part 0 – Organizational rules. The amendment of § 0.141 of the Commission's organizational rules delegated authority to the Chief, CGB to conduct periodic review of all open dockets with the objective of terminating those that were inactive. The Commission stated that termination of such proceedings also will include the dismissal as moot of any pending petition, motion, or other request for relief in the terminated proceeding that is procedural in nature or

otherwise does not address the merits of the proceeding. On June 3, 2011, CGB released Termination of Certain Proceedings as Dormant, Public Notice, DA 11-992, CG Docket No. 11-99, published at 76 FR 35892, June 20, 2011, (Termination Public Notice) which identified those dockets that could potentially be terminated and provided interested parties the opportunity to file comments on these proposed terminations. Based upon CGB's review of the six comments received in response to the Termination Public Notice, and for the reasons given below, CGB hereby terminates the proceedings that are listed in the Attachment to DA 11-1833, which were previously listed in DA 11-992. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1833A1.doc.

2. Commenters request that the following seven dockets remain open: RM-9246, RM-9682, RM-10995, RM-5528, RM-10412, RM-9395, and RM-10165. REC Networks asks that CGB maintain Amendment of the Rules to Establish Event Broadcast Stations, Media Bureau Petition for Rulemaking, RM-9246 (March 19, 1998); Request Amendment of the Commission's Rules to Create a New Indoor Sports and Entertainment Radio Service, Media Bureau Petition for Rulemaking, RM-9682 (July 8, 1999); and In the Matter of the Commission's Rules to Provide for Displacement Relief for FM Translator Stations, Media Bureau Petition for Rulemaking, RM-10995 (June 2, 2004) that relate to LPFM and FM translator services. However, on July 12, 2011, the Commission released Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, MM Docket No. 99-25, MB Docket No. 07-172, Third Further Notice of Proposed Rulemaking in two dockets that relate specifically to those services and, given the common subject matter, the materials in each of the proceedings that REC Networks seeks to keep open may be refiled in those two dockets. For this reason, CGB denies REC Networks' request.

3. Donald J. Schellhardt and Nickolaus E. Leggett request that Request to Consider Requirements for Shielding and By Passing Civilian Communications Systems from Electromagnetic Pulse (EMP) Effects, Common Carrier Bureau Petition for Rulemaking, RM-

5528 (October 22, 1991) remain open. Mr. Leggett also asks that the Commission keep open Amendment of the Commission's Rules Regarding Field Repair Requirements for Commercially-built Transmitter and Transceiver Equipment for the Amateur Radio Service, Petition for Rulemaking, RM-10412 (April 11, 2002). However, both of these requests were denied by previous Commission actions and should have already been closed; therefore CGB rejects the requests to keep them open.

4. Mr. Leggett also argues that the Commission should not publish documents without specific comment dates, rather than stating that "comments are due X days after publication in the Federal Register." The Commission initiated the subject proceeding as a part of its commitment to improving docket management procedures. To that end, DA 11-1833 terminates almost 1,000 pending but inactive proceedings. Additionally, going forward, the Commission will monitor and expeditiously terminate any proceeding in which an order with no further notice of proposed rulemaking has been released and no petition for reconsideration of the order has been timely filed. Regarding Mr. Leggett's concern that documents are published before the comment dates are established in the Federal Register, such dates are readily available in EDOCS once the document has been published, and commenters may always wait for this publication to submit their filings in the record. However, CGB will continue to look for ways to increase participation in our proceedings by the public by streamlining the comment process and making deadline and other submission information more readily available.

5. Mr. Jonathan Hardis requests that Amendment of the Commission's Rules to Permit the Introduction of Digital Audio Broadcasting in the AM and FM Broadcast Services, Mass Media Bureau Petition for Rulemaking, RM-9395 (November 6, 1998) remain open, even though he acknowledges that there has been no activity in the proceeding in over 11 years and none is expected. Mr. Hardis maintains that the Docket may contain material that is related to ongoing MM Docket No. 99-325. See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, FCC 07-33, Second Report and Order, published at 73 FR

3652, January 22, 2008. To address this concern, the records in terminated proceedings will remain part of the Commission's official record, and the various pleadings, orders and other documents in these dockets will continue to be accessible to the public, post-termination. Since docket RM-9395 has had no activity in over a decade, CGB finds that it is dormant and rejects Mr. Hardis's request to keep it open.

6. ARRL, formerly known as the American Radio Relay League, Incorporated, objects to the dismissal of its Petition for Rulemaking, Amendment of Part 2 and Part 97 of the Commission's Rules Regarding the 2300-2305 MHz Band, RM-10165, in which ARRL requested that the Amateur Radio Service allocation status in the 2300-2305 MHz band be changed from secondary to primary. ARRL originally filed its Petition on May 7, 2001, and the Commission placed it on Public Notice on July 2, 2001. See Consumer Information Bureau Reference Information Center Petitions for Rulemaking Filed, Report No. 2491 (July 2, 2001). On October 10, 2002, the Commission's Office of Engineering and Technology (OET) issued Allocation of Electromagnetic Spectrum Pursuant to Title III of the Balanced Budget Act of 1997 and Amendment of Part 90 of the Rules to Establish a New Subpart Y – Personal Location and Monitoring Service, RM-9797; Amendment of Parts 2 and 97 of the Commission's Rules Regarding the 2300-2305 MHz Band, RM-10165; Co-Primary Allocation of 2300-2305 MHz to the Amateur Radio Service and the Miscellaneous Wireless Communications Service, RM-10166, Order, DA 02-2587 (OET Order) dismissing ARRL's Petition.

7. ARRL claims that the OET Order did not resolve the issue of the allocation status of the Amateur Radio Service in the 2300-2305 MHz band, or ARRL's request for a primary allocation in that segment. ARRL maintains that the status of the Amateur Radio Service allocation at 2300-2305 MHz remains relevant because of actions taken by the Commission with respect to an adjacent band at 2305-2320 MHz; because ARRL has filed a Petition for Reconsideration regarding the actions taken in the 2305-2320 MHz band; and due to other unrelated proposals for use of the 2300-2305 MHz band.

8. Regarding the 2305-2320 MHz band, in May 2010, the Commission issued an Order that amended certain rules governing the Wireless Communications Service (WCS) to enable WCS licensees to provide mobile broadband services (WCS Order). In doing so, the Commission acknowledged that out-of-band emissions that could result from expanded use of WCS mobile devices in the 2305-2320 MHz band have the potential to increase interference to amateur radio operations in the 2300-2305 MHz band. During the course of the WCS proceeding, however, ARRL did not file any comments raising the issue of whether the Amateur Radio Service allocation status in the 2300-2305 MHz band should be modified. Although ARRL filed a Petition for Reconsideration of the WCS Order, it did not request a change in the status of the Amateur Radio Service allocation at 2300-2305 MHz in that filing. In its Reply Comments to the Opposition to its WCS Petition, ARRL specifically stated that it was not asking the Commission to revisit any aspect of its past decisions regarding that status.

9. CGB finds that the RM-10165 proceeding concerning ARRL's request to change the status of the Amateur Radio Service to primary in the 2300-2305 MHz band should be terminated, since its request was dismissed and ARRL did not file a petition for reconsideration of that dismissal.

10. Finally, Mr. James Whedbee suggests that termination of proceedings for dormancy is not just cause for the termination of a proceeding on the merits. Accordingly, he maintains that the Administrative Procedure Act may be violated by the dismissal of dormant dockets that are not otherwise obsolete or subsumed, and recommends that CGB leave open those docketed proceedings which are "merely dormant for want of sufficiency of notice of their impending termination."

11. In the Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of the Commission Organization, Notice of Proposed Rulemaking, released on February 22, 2010, published at 75 FR 14401, March 25, 2010, the Commission proposed, inter alia, that § 0.141 of its rules be amended to delegate authority to the Chief, CGB

to terminate dormant proceedings, and invited public comment on the proposed termination process. After due consideration of the comments filed in that proceeding, the change to the rule, which was supported in the comments received, was duly adopted in the Procedure Order.

12. Mr. Whedbee had an opportunity but failed to file his objection to the proposed amendment to § 0.141 of the Commission rules. Because the merits of that final action are outside of the scope of the instant proceeding, CGB rejects his argument as an untimely petition for reconsideration. CGB notes that the Termination Public Notice provided clear notice of the intention to terminate for dormancy all of the proceedings that are the subject of DA 11-1833, and gave any interested party the opportunity to substantively comment on each such possible termination. As noted above, each such argument specific to a particular proceeding or proceedings that has been submitted has been fully considered herein.

REGULATORY FLEXIBILITY ACT

13. The Commission's action does not require notice and comment and therefore is not subject to the Regulatory Flexibility Act of 1980, as amended. See 5 U.S.C. 601(2), 603(a). The Commission nonetheless notes that it anticipates that the rules adopted will not have a significant economic impact on a substantial number of small entities. As described above, the Commission primarily changes its own internal procedures and organizations and does not impose substantive new responsibilities on regulated entities. There is no reason to believe termination of certain dormant proceedings would impose significant costs on parties to Commission proceedings. To the contrary, the Commission takes the actions herein with the expectation that overall they will make dealings with the Commission quicker, easier and less costly for entities of all size.

CONGRESSSIONAL REVIEW ACT

The Commission will not send a copy of document DA 11-1833 pursuant to the Congressional Review Act, see 5 U.S.C. 801 (a)(1)(A) because the Commission is not adopting, amending, revising, or deleting any rules.

ORDERING CLAUSES

Pursuant to sections 1, 4(i), and 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and (j) and § 0.141 of the Commission rules, the proceedings listed in the Attachment to DA 11-1833, which can be downloaded in Word or Portable Document Format (PDF) at:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1833A1.doc, ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Joel Gurin,
Chief, Consumer and Governmental Affairs Bureau.

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